IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 563 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMADHANIF ALIAS HANIF DADHI GANIHAI KURESHI

Versus

DEPUTY COMMISSIONR OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR AJ DESAI AGP for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/01/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for the petitioner and Mr.A.J.Desai, learned APP for respondents No.1, 2 & 3.

#. The petitioner has challenged the legality, validity

and propriety of the externment order dated 22-3-1999 passed by respondent No.1 against the petitioner in exercise of power conferred under Section 56 of the Bombay Police Act, 1951 (hereinafter referred to as `the Act') under Article 226 of the Constitution of India. The petitioner has also challenged the order passed by the Deputy Secretary, Home Department, State of Gujarat dated 16-6-99 in the appellate proceedings under Section 60 of the Act against the above stated externment order also.

#. A show cause notice dated 17-2-98 has been served to the petitioner under Section 59 of the Act by Assistant Police Commissioner, H - Division, Ahmedabad indicating the fact that complaints have been received against the criminal activities of the petitioner since August, 1997. Accordingly, the petitioner has been purchasing articles from the shopkeepers in the area of Shahalam, near Mira Cinema and have been refusing the payment. That on demand, the petitioner has been threatening the owner of the shop by showing razor. Furthermore, the petitioner has been extorting money from such business people and have also been travelling in three wheeler without making any payment of fare. That on demand of the fare by owner of the vehicle, the petitioner has been beating them and threatening by showing knife.

#. That such activities of the petitioner were verified and it was found that on account of fear of harm to the person and property, the witnesses are not willing to come forward to give complaint against the petitioner and as such, in order to prevent the petitioner from continuing his nefarious criminal activities, it has been decided to extern the petitioner from the area of Ahmedabad Rural, District Gandhinagar, Kheda District and Mehsana District for a period of two years. The petitioner was called upon to show cause why such externment order be not passed and implemented against him. The petitioner was asked to produce his reply and witnesses if any on 13th February, 1999.

#. The petitioner has averred and contended that the petitioner having filed the reply on 7th March, 1998, had examined witnesses on different dates, and on 8th December, 1998 had filed his additional reply against the show cause notice issued. That despite the said representation, respondent No.2 has passed the impugned externment order on 22-3-1999.

#. Being arrrieved and dissatisfied by the said order, the petitioner preferred the appeal under Section 60 of

the Act which was heard by the Deputy Secretary and vide order dated 16-6-199, the said appeal was rejected without considering the contentions raised and hence the present petition is filed.

#. It has been contended at bar on behalf of the petitioner that impugned action of exercising of power under Section 56 of the Act after service of show cause notice on 17-2-1998, has been taken as late as on 22-3-1999. Not only that, the action has been delayed for more than 3 months, even after the additional reply and submission was urged before respondent No.2 on 8-12-1998. Thus, the unexplained inordinate delay has rendered the impugned order of externment invalid not only that but the order of appellate authority dated 16-6-1999 is also bad in law.

#. That in the matter of CHOTHAMAL SAGANSINGH RAJPUT VS. STATE OF GUJARAT reported vide 1989 (1) GLR page 63, the Division Bench of this Court has expressed the view in para 6 of the matter to the effect that in externing a person, which is in the public interest, the authorities are expected to act promptly and if there is delay in the matter, which would spell out that there is no urgent need nor any necessity to extern the person from particular locality or district. It is also observed that the externment order curtails the freedom of the movement of the person concerned. It would definitely enure to the benefit of the party concerned and on that score, he would be entitled to benefit of quashing of such order of externment if delay has not been reasonably explained.

#. In the instant case, affidavit in reply has been filed by one Shri J.N.Rajgor, the Deputy Commissioner of Police, Ahmedabad city dated 20th October, 1999. That no explanation appears regarding delay caused in taking action particularly for a period in between 8-12-1998, the day on which the proceedings were concluded to 22-3-99, the day on which the externment order has been passed. That the petitioner having taken the same contention vide para 6.8, in the absence of any reasonable explanation on the part of the respondent, conclusion would be inescapable rendering the said order bad in law on account of inordinate unexplained delay.

##. On the basis of the aforesaid discussion, the impugned order dated 22-3-1999 passed by respondent No.1 the Deputy Commissioner of Police against the petitioner as well as the order dated 16-6-1999 passed by the Deputy Secretary to the State of Gujarat under Section 60 of the

Act, in appellate proceedings against the said order are hereby quashed and set aside. Rule to that extent is made absolute.

Date : 21-1-1999 [A.K.Trivedi, J.]

#kailash#